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A HANDBOOK
OF
ENGLISH AND FOREIGN COPYRIGHT

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A HANDBOOK OF
ENGLISH AND FOREIGN
COPYRIGHT

IN LITERARY AND DRAMATIC WORKS

BEING

A CONCISE DIGEST OF THE LAWS REGULATING COPYRIGHT IN SOME
OF THE CHIEF COUNTRIES OF THE WORLD, TOGETHER WITH AN
ANALYSIS OF THE CHIEF COPYRIGHT CONVENTIONS EXISTING
BETWEEN GREAT BRITAIN AND FOREIGN COUNTRIES

BY

SIDNEY JERROLD

OF THE MIDDLE TEMPLE, ESQ., BARRISTER-AT-LAW



London

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1881

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INTRODUCTION.

It is not always that the legislator can derive any practical benefit from a study of foreign laws on a subject which engages his attention. It is obvious that where law is the direct outcome of national character and peculiarities it is scarcely fitted for any country but its own. Where, however, it is, so to say, quite extraneous and artificial, as is the case with copyright law, a foreign legal system may usefully be studied for the purposes of comparison. It would be to waste paper and ink to dwell on the importance, to all classes, of the law of copyright. It is at present engaging the attention of many countries besides our own. Three years ago an Association ¹ was founded whose chief object is to promote the improvement of

¹ The International Literary Association, founded at Paris in 1878, where and when it held a congress. A similar congress was held at London in 1879, at Lisbon in 1880, and is to be held at Vienna this year.

copyright laws, and to secure a uniform international copyright for the whole civilised world. In 1878 a Copyright Commission was issued by Her Majesty, the chief recommendations of which will be found in the Appendix to this book. At the beginning of this year Mr. James Russell Lowell, the United States Minister in London, handed to Her Majesty's Government the draft of a proposed Copyright Convention between Great Britain and America. The text of this proposal, with the suggested additions and alterations, will also be found in the Appendix.

There is very little chance of any Copyright Bill getting through Parliament this session; nor is there much hope of the Anglo-American Convention being concluded for a long time to come. I have thought that, therefore, some such general view as this of the whole subject of copyright, both at home and abroad, might be useful to all who are interested in the subject of copyright, and who would be, perhaps, embarrassed by referring to the many large professional text-books on copyright which are extant.¹ These are written

¹ The excellent and elaborate treatise on 'Copyright in America and England,' by Eaton S. Drone (Boston, Mass., 1879), by far the best work on the subject; then Mr. Copin-

for lawyers, and are published at prices which are prohibitive for the general public. This book will be of service to readers who are anxious to form their opinion on the question of copyright; and will, I hope, materially aid all who, when the time for legislation arrives, will be called upon to take part in the discussion of the proposed enactments.

I have stated the law of each country as distinctly and concisely as possible; and, where possible, have myself referred to the original text of the same. In all cases I have indicated the source whence I have obtained the law, and the place where the English reader will find it in the most intelligible form, should he wish to refer to another version of it or to the original. The texts of the chief conventions concluded between this and other countries will be found useful as showing what are the provisions of treaties that have been found to be practically useless.

With regard to the digest of the English and American copyright law, I may be allowed to say that the unscientific character of English legislger's '*Law of Copyright*' (London, 1881), with a good account of the foreign law; and Mr. Shortt's able work on the same subject (London, 1871).

lation on the subject, and the vast number of conflicting and confused decisions interpreting and obscuring it, have made the task anything but easy, despite the assistance often afforded by the valuable text-books that I have alluded to. I think, however, that I have stated the law correctly, though I feel that another might have done it more elegantly and concisely. I have forborne to state my authorities—such as cases and sections of statutes—as I proceeded, for that would have increased too much the size of this book, and would have been of little help to lay readers, for whom it is chiefly written. This little book has no scientific pretensions, and I shall be content if it is found a useful handybook by the general public; and, since brevity is the soul of a preface, I will say no more.

S. J.

MIDDLE TEMPLE, August 1, 1881.

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ENGLISH AND FOREIGN
COPYRIGHT



•

LITERARY AND DRAMATIC COPYRIGHT IN AMERICA AND GREAT BRITAIN.

1. *LITERARY COPYRIGHT.*

THE English and American copyright laws are so alike, viewed as a whole, that were I to treat of each separately a great deal of repetition would be almost unavoidable. I shall, accordingly, state the American and English systems as if they were one, merely pointing out here and there in what respects they differ.

COPYRIGHT AT COMMON LAW.

There are two kinds of copyright—copyright at common law, and copyright under the different statutes bearing upon the subject. These two copyrights exclude each other, so that common law copyright only exists where the statutes cannot operate; that is, where the work has not

been published within the meaning of the statute (if any) which regulates copyright in the particular kind of work which it is sought to protect. Hence, for example, if a book has not been unrestrictedly sold or distributed to the public, it has not been published within the meaning of the copyright statutes, and the common law remains in force to protect the work. The public reading of an unpublished manuscript is not a publication such as to destroy the common law right. Unlike the statute law, this common law right endures for ever, and is absolute. As long as a man does not publish his book, he can for ever prevent any one else from doing so without his authority. These common law rights are enjoyed by aliens as well as by native writers.

Unpublished lectures are also protected against unlicensed reproduction; and if in England the lecturer shall have given notice, two days before delivery, of the delivery of the lecture, to two justices living within five miles of the place where it is to be delivered, he will be able to recover the penalties hereinafter stated (see p. 28). This notice is unnecessary if the lecture be delivered in any college, public school, or university, or on any public foundation or endowment. The

selling or the gift of a manuscript is not of itself a selling or gift of the copyright therein ; nor does the recipient of a letter acquire any right to publish the same without the authority of the sender, unless, in some cases, it be to justify himself with regard to some matter on which the letter bears.

The unpublished work must be original, and neither immoral nor seditious. In America, section 4967 of the revised statute provides that whoever, without the authorisation of the author or proprietor of a manuscript, publishes the same, shall be liable in damages. It is doubtful whether this applies to the American assignee of a foreign author or manuscript proprietor. The English statute book contains no such enactment.

STATUTORY COPYRIGHT.¹

The moment a book is published, the common law right is destroyed by the statute.

Hence the common law right only applies to

¹ The English statutes regulating literary and dramatic copyright are : 15 Geo. III. c. 53 ; 5 & 6 Will. IV. c. 65 ; 5 & 6 Vict. c. 45.

International copyright : 7 Vict. c. 12 ; 10 & 11 Vict. c. 95 ; 15 Vict. c. 12 ; 38 Vict. c. 12.

The American are : Revised Statute, §§ 4948-71 ; 18 U. S. Stat. at Large, 78.

unpublished works, and the statutory right to published works. It is obvious that practically, then, statutory copyright exists exclusively in printed matter.

A 'book' means every volume, part of a volume, pamphlet, sheet of letterpress, sheet of music, map, chart, or plan separately published. In England it is doubtful whether a newspaper is a book; at all events its contents are protected under 5 & 6 Vict. c. 45, s. 18. In America each issue of a newspaper may be copyrighted as a 'book.'

Every original book which is neither immoral nor seditious may be copyrighted.

Every book is original which is the result of a new arrangement or combination of old materials, or of an old arrangement of new materials, provided the author of the book shall in the said arrangement or combination have used his own skill, labour, or judgment. A writer may use some one else's arrangement and materials, as in the case of an abridgment; he may even copy small parts exactly as in the case of dictionaries, maps, grammars, compilations, &c. But in all these operations he must use his own independent judgment and labour, and must not produce his work by merely mechanical copying; and there must be in it some novel element whether of

arrangement or materials. The case of an abridgment is only an apparent exception to this rule. The real novelty in that case is in the exact degree of abridgment; and no subsequent abridgment of the common source must use precisely the same words as the first, or abridge to precisely the same extent.

If the book abridged be copyrighted, 'there must be real, substantial condensation of the materials, and intellectual labour and judgment bestowed thereon; and not merely the facile use of the scissors, or extracts of the essential parts constituting the chief value of the original work.'¹ The tendency of English and American courts is very strict against abridgers of copyrighted works.

Gazetteers, dictionaries, arithmetic books, histories, directories, shipping lists, &c.—are all examples of publications which, though containing materials that are old, or open to every one, are yet copyrightable if the conditions above set forth be complied with. As to translations protected by the International Copyrights Acts, see *post*, pp. 24 *et seq.*

Copyright extends to everything in the book,

¹ Story, J., *Folsom v. Marsh*, 2 Story's Rep., U. S., 1st Circuit.

including illustrations, &c. But part of a book may be copyrightable, and part not. A title is a trademark, and is protected as such.

A new edition of a book will be entitled to a separate copyright if it contains sufficient new matter to make it practically a new book.

At any rate the additions or alterations in a new edition will be entitled to protection. Notes to a book which is public property are copyrightable.

In England translations of works not protected by International Copyright Acts or conventions are copyrightable.

In America the translation of any work native or foreign, whether the former be copyrighted or not, may be copyrighted.

The unauthorised dramatisation of a copyrighted book cannot be copyrighted as a book.

With regard to music, an old air, or piece of music, rearranged with a new accompaniment or words, or both; a pianoforte arrangement of an opera, a set of quadrilles, &c., on airs of an opera, are all copyrightable, provided no copyright be infringed by their publication.

As to judicial decisions, the actual decisions might be copyrighted by the state. The summaries and descriptive matter, &c., of law reports

are copyrightable by the party writing the same either *per se* or *per alium*. Digests of law reports are copyrightable.

With regard to advertisements, the mere fact that a composition is used for advertising purposes does not affect its capability of being copyrighted. Any book intended as an advertisement, which has substantial literary merit or imparts knowledge, may be copyrighted. For instance, where a 'bookseller issues an account of his stock, containing short descriptions of the contents of the books, calculated to interest either the general public or the persons who may take an interest in the questions treated of by particular books,' he can copyright that catalogue, though it be an advertising one.

The contents of periodicals and newspapers are copyrightable in Great Britain under 5 & 6 Vict. c. 45, s. 18; in the United States as ordinary books, each issue being there considered as a separate book.

THE DURATION OF COPYRIGHT.

In England copyright in a 'book' endures for forty-two years from the date of publication, or for the author's life and for seven years after.

whichever of these two terms may be the longest. As to the divisions of this period in the case of copyright in English periodicals, &c., see *infra*, p. 12.

In America copyright in a 'book' endures for twenty-eight years from the date of publication, and if at the end of this term the author or his widow or children be living an additional term of fourteen years' protection may be secured by him, her, or them.

CONDITIONS PRECEDENT TO THE VESTING OF COPYRIGHT.

The first publication of the book must be in Great Britain¹ to secure British copyright, and, it seems, in America to secure American copyright. If, however, there be a simultaneous publication (on the same *day*) abroad, that will not bar a claim to copyright in either Great Britain or the United States, as the case may be.

In the case of aliens wishing to secure a British copyright apart from the International Copyright Acts, it is necessary that the author should be, at the time of the first publication in

¹ 'Great Britain' means England, Scotland, Wales, Ireland, and Berwick-on-Tweed.

Great Britain, within the British dominions.¹
This does not apply to native authors.

American authors need not be in the United States at the time of publication of their book.

The book must be published before statutory copyright will vest in the proprietor of it. Publication may be defined as an unrestricted distribution and giving to the public for money, or a private distribution of copies. It is not necessary, however, that a copy should be actually sold or distributed; it is enough if it be offered.

But when a book is printed on the distinct understanding that it is only to be privately circulated in a restricted circle, then it will not be considered to be published.

As to the forms to be gone through before copyright is complete, the laws of Great Britain and of the United States vary. In the latter, no person shall be entitled to a copyright unless before publication he shall have sent to the Librarian of Congress at Washington a printed copy of the title of the book, and within ten days from publication two copies of such book. This applies to each issue of a magazine or paper. A notice that

¹ This larger term applies to any place under English rule.

it has been copyrighted must be printed in each book in a conspicuous place. A new edition containing substantial alterations is a new book as far as these forms are concerned.

In England the book need not be registered in order to the vesting of copyright; but no action for infringement of copyright can be brought before the proprietorship in the copyright of the book has been registered in the registry-book of the Stationers' Company.¹ Copyright vests on the first publication, and not on registration; but in the United States it dates back to the recording of the title of the book. A copy of the best edition must be delivered within one month of publication in London; within three months of publication elsewhere in Great Britain; and within a year of publication elsewhere in the British dominions, at the British Museum. If a demand be made within a year of publication by any of the following bodies, a copy of every book shall be delivered to them within one month of such demand: that is, the Bodleian Library, the Public Library at Cambridge, the Library of the Faculty of Advocates in Edinburgh, and the Library of Trinity College, Dublin.

¹ The fee for registration, or for a copy thereof, is 5*s.*

TO WHOM COPYRIGHT MAY OR DOES
BELONG.

Aliens.—They may claim copyright exactly like British subjects, provided they are within the British dominions at the time of publication.

In the United States they can only claim copyright if they be permanently domiciled therein. Otherwise neither they nor their American assignees may claim copyright in the States.

By virtue of the International Copyright Acts (7 Vict. c. 12; 10 & 11 Vict. c. 95; 15 Vict. c. 12; 38 Vict. c. 12) aliens and natives first publishing a book in a foreign country may, in some cases, secure British copyright (see *post*, pp. 24 *et seq.*).

As to citizens of the United States and British subjects, any one who has written a copyrightable book, and is under no legal disability, may own copyright. Further, any one to whom a copyright has been assigned may own the same; and any one to whom a manuscript book has been assigned for that purpose may copyright the same when it is published.

Two persons may be joint authors of a work;

‘but to constitute joint authorship there must be a common design.’ The state and corporate bodies may be owners of copyright.

In England the Crown has the right of granting by patent to its printers and the Universities of Oxford and Cambridge the exclusive right of printing the Bible, the Book of Common Prayer, and the Statutes.

The following bodies have a perpetual copyright (unless the assignment or bequest be limited) in books bequeathed to them: The Universities of Oxford, Cambridge, Glasgow, Aberdeen, Edinburgh, and St. Andrews; Trinity College, Dublin; and the Colleges of Winchester, Westminster, and Eton. If these bodies grant, sell, or lease their right, it becomes void.

In England if the proprietor or publisher of any encyclopædia, magazine, periodical, or work published in parts, employs any one to compose any article, book, or part thereof on the terms that the copyright therein shall belong to such proprietor or publisher, the latter shall enjoy on the publication of the article, &c., the same rights as if he were the actual author of it. But the right of publishing such article, &c. (except, perhaps, in the case of an encyclopædia), reverts to the author after twenty-eight years from the first

publication for the remainder of the forty-two years. During the twenty-eight years the publisher or proprietor may not separately publish the article, except with the author's consent. If the author reserves the right of separate publication, his copyright in such separately published article, &c., will date from such separate publication; but the proprietor or publisher of the periodical will be able to continue the publication in the periodical, &c. A newspaper comes within these provisions.

In the United States there is no such law affecting periodicals, &c. The ownership of copyright in an article, &c., depends on general principles. Where an author is paid a regular salary there will be a fair presumption that the copyright is the proprietor's or publisher's absolutely; but if the author, not being specially employed, contributes an article, then, in the absence of express agreement, he will generally be considered to retain the copyright.

TRANSFER OF COPYRIGHT.

Common law copyright may be transferred by parol without any writing. By English and American statute law the assignment of a statutory

copyright must be in writing. In England two modes of transfer are applicable to a statutory copyright. When a copyright has been registered, the transfer can be effected by making an entry of the assignment in the registry, and of the name and address of the assignee. This entry is *primâ facie* proof of assignment, which may be rebutted. The other mode of transfer is by an assignment in writing, which need not be registered. Either of these modes may be used with a registered book; only the latter with a non-registered book.

In America the assignment must be in writing, and this must be recorded in the office of the Librarian of Congress within sixty days of execution. There is no other mode.

All copyright statutory and at the common law is personalty, and can be bequeathed and will be distributed as such.

In the United States an author may divest himself and his family of the right of renewal of copyright at the end of the first twenty-eight years by an absolute assignment before publication, in which case neither he nor his assignee can renew. After publication he cannot assign his renewed term of fourteen years till it has actually been secured by him, though he can bindingly

agree to assign it when it shall have been secured by him.

An author may assign any divisible portion of his right: such as his right of performance of a play as apart from his right of printing the same, his right of translation (if he have secured one), his right of publication in one country; but he cannot assign a right to publish in a particular part of a country. It is doubtful whether an author can assign for a particular time short of his full term of copyright. He can give licence to publish for any particular time, but in that case he does not part with his copyright.

In England—but, perhaps, not in the United States—an assignor of a copyright may sell, concurrently with the assignee, all copies of the book which he has printed before the assignment. This rule holds good with licences for a limited time.

INFRINGEMENT OF COPYRIGHT.

It is an infringement to reproduce entirely or substantially a copyrighted book without the author's consent in writing (in America the writing must be executed in the presence of two witnesses). Every use of a book which does not amount to infringement of copyright is called fair

use. Apart from fair use there is no infringement of copyright if one man by his independent labour, thought, and ingenuity produces a work similar to one already copyrighted.

With regard to fair use the following principles may be laid down :

Parts of a copyrighted book may be copied literally for the purposes of illustrating an argument, of criticism, or compilation, provided they be not more numerous nor of greater length than the circumstances require, and do not constitute a material part of the work from which they are taken.

It is not an infringement of copyright to use a book for the purpose of finding facts and authorities, nor, after reference to these authorities and investigation of these facts, to publish a book wherein passages quoted and conclusions are drawn therefrom similar to those contained in the book consulted.

Apart from international copyright it is doubtful whether it is an infringement of British copyright to publish a translation of a British book. It is not an infringement of American copyright to publish a translation of an American book, unless the author has reserved to himself such right.

‘An abridgment does not constitute an infringement of “the original or originals from which it is abridged” if a fair use of these be made; “but the republication of a considerable part of a book is an infringement of the copyright existing in it although it may be called an abridgment, and although the order in which the republished parts are arranged may be altered.”’¹

It is impossible to define an infringement more narrowly. Each case has to be decided according to its particular facts, and only the most general principle is deducible from the mass of decisions. To illustrate fully, by reference to these decisions, the principles I have enunciated, would take up too much space, but I will give one or two illustrations.

1. A. publishes a directory. B. calls on the persons whose names and addresses he has obtained from A.’s book, and, having personally collected all the said names and addresses, publishes a directory practically identical with A.’s. This is not an infringement of A.’s copyright. But B. ‘must not take the passage of the directory, and go and see whether it happens to be accurate, and, if it

¹ Mr. Justice Stephen. See ‘Report of Copyright Commissioners,’ 1878, p. lxx.

is accurate, bodily copy the passage into his directory.'

A. composes an opera. B. takes airs from the same and arranges them for the pianoforte. This is an infringement.

A., by his own labour and judgment, collects and reduces into a course of systematic instruction questions commonly asked as to common phenomena of life, answering the questions and explaining the phenomena. B., desiring to write a book of similar nature, instead of taking the pains of searching into the common sources, and obtaining his subject-matter therefrom, avails himself of A.'s labour, adopts his arrangements, even the questions he has asked, and saves himself pains by availing himself of A.'s labours and researches. This is an infringement. B. had a right to refer to A.'s authorities and draw his own conclusions therefrom, and he might have looked through A.'s book to see if he had forgotten anything.

It is not an infringement to read out or recite in public any writing other than a dramatic composition or a manuscript lecture.

2. *DRAMATIC COPYRIGHT.*

UNDER this head I shall briefly state the law relating to the right of performing dramatic and musical compositions, and of delivering lectures, which is called by Mr. Drone, in his 'Treatise on Copyright,' by the convenient name of Playright. Plays, music, and lectures are capable of being put to at least two uses: they may be published as books, or publicly delivered or represented. These uses are distinct, and correspond with distinct rights.

The English and American laws on this branch of the subject differ to a great extent, so that they will be best given separately.

UNITED STATES.—The author of an unpublished play, or his assignee, has for ever the exclusive right of publicly performing such play. A public performance of a manuscript play, either in or out of the States, is not a publication of it. It is immaterial whether the author be an American citizen, or an alien. An unpublished translation of a foreign play will be entitled to this protection, though any one is free to prepare a translation of his own.

When once the play is published as a book, then the common law right is gone, and the book must be copyrighted under the statute. The right of performance begins and runs with the right of publication, and ceases with it. A performance prior to the publication does not defeat the statutory right. Only citizens or domiciled aliens can secure this right. If a play should be published in such a way as not to be protected by statute it will, being taken out of the common law, become public property.

A printed play being a book, the rights attaching to it—of performance and publication—must be transferred by an assignment in writing. Where it has not been printed these rights may be assigned by parol. In the States a musical composition is only protected as regards the right of performance when it is in combination with words amounting to a dramatic composition. All music is protected as regards publication by printing. There is no exclusive right of performing instrumental music.

GREAT BRITAIN.—The law governing copyright in dramatic and musical compositions in this country is the most puzzling branch of copyright law.

The two enactments on which the law rests are the 3 & 4 Will. IV. c. 15, and the 5 & 6 Vict.

c. 45 ; and the difficulty of construction is in reading section 20 of the last Act with section 1 of the former Act. I shall give my construction of the statutes, and then give some others.

The moment a piece (the law as to musical compositions is the same as that as to dramatic compositions) is publicly performed or printed, statutory copyright begins, provided certain conditions are fulfilled. Until then, native and foreign authors are protected against unauthorised public performance by the common law.

The exclusive right of public performance given by the statutes is for forty-two years, or for the author's life and seven years afterwards, whichever is the longer term. In the case of plays published as books before they are performed the term runs from such publishing ; in the case of plays performed before they are published as books, or never so published, the term runs from the first public performance.

Mr. Justice (then Mr. Fitzjames) Stephen gives the following interpretation (question 3069, p. 159, Copyright Commission, Evidence, 1878): 'It seems to me that the two Acts together come to this: if a man publishes a dramatic piece of any sort, that is a book under the Act of Victoria, and he has copyright in that book for the term

given by that Act; if he does not first print and publish, but if he first represents without printing or publishing, then he has the exclusive right to represent that piece for the term of years given by the Act of William as amended by the Act of Victoria. If he publishes first, and does not represent until afterwards, it seems to me extremely doubtful whether he gets any exclusive right of representing the drama, and whether he does not abandon that exclusive right by publishing?' For another view see answer to question 3070, *ubi suprâ*.

Statutory copyright, in plays, may be secured by an alien who is in the British dominions at the time of first publication or performance in the United Kingdom, from whichever event the copyright may date. If the play be first published in the United Kingdom as a book before being performed, it seems immaterial whether the first performance takes place in the kingdom or out of it.

The right of performance may be transferred by an assignment in writing, by registration, or, where the transfer takes place before the first performance or publication, by parol. The right of performance may be registered like a copyright, but no such registration is necessary to the vesting of the right or to its enforcement by action.

As regards the tests of infringement, a play does not differ from an ordinary book of fiction. A material part must be copied before there is piracy. The unauthorised performance complained of must be in a public place of entertainment. The fact that a charge for admission is made will not make a place public, nor will the fact that there is no charge make it private. The question of private or not private turns on the degree to which the place was accessible to the public.

Further, in order to make it piratical the performance must be without the consent of the owner of the right, which consent must be in writing here, but not in America. The Dramatic Authors Society here is the agent of its members to consent, and to sue for the penalties of infringement.

With regard to dramatisations it is decided that to perform a dramatisation of a copyrighted book is not an infringement of the copyright of that book, nor is it an infringement of another and prior dramatisation (even if by the author of the book) if it is taken from the book and not copied from the said dramatisation. In the United States the author may reserve to himself the right of dramatisation.

INTERNATIONAL COPYRIGHT.

The United States have no international copyright.

The Acts of Parliament regulating this branch of copyright in the British dominions are: the 7 & 8 Vict. c. 12; 15 & 16 Vict. c. 12; 25 & 26 Vict. c. 68; and 38 Vict. c. 12. The effect of them is as follows:—

A. Her Majesty is empowered to issue an Order in Council (which must be stated to be grounded on reciprocity) directing that books and dramatic and musical compositions first published or performed in the foreign country in the order named shall, for a period not exceeding that for which they would be protected if first published or performed in this country, enjoy the benefit of all enactments, except such of them as relate to the delivery of copies to the British Museum and the four Libraries (see p. 10), protecting such compositions when first published or performed in this country, provided no enactment be excepted in the Order.

B. Her Majesty is further empowered by Order in Council to direct that authors of such books or dramatic compositions as are above mentioned be entitled, on conditions hereafter set

forth, to prevent, for a period not exceeding five years from the publication or first performance in this country of an authorised translation, the publication or performance of an unauthorised translation of such books or dramatic compositions.

Nothing in this last paragraph (B.) shall be construed, unless otherwise ordered by Her Majesty in Council,¹ to prevent a fair adaptation or imitation (not amounting to a complete translation) of any foreign play, whether or not first performed in a country named in any Order in Council, being performed in the British dominions without the consent by the author of the original.

Political articles appearing in any journal or periodical published in a country named in an Order in Council, may be reproduced or translated in British journals or periodicals provided it be stated whence the articles are taken. Non-political articles may be used in a like fashion, if the author has not stated that he reserves the right of translation or reproduction. Such statement will without further formality ensure protection in the British dominions.

None of the above rights and privileges will vest (except when it is otherwise stated), unless the following conditions are observed :

1. As to republication. To prevent unau-

¹ See as regards France, p. 105.

thorised republication the title, the name and abode of the author, and the place of first publication in the country in the Order named, of the book must be entered in the register at Stationers' Hall within such time as shall be stated in the Order. In the case of a manuscript dramatic or musical composition, the time and place of first performance shall be stated instead of those of first publication. A copy of the best edition of the original shall be delivered at Stationers' Hall within such time as in the Order shall be stated.

2. As to translations. The original work must be registered as above within three months of its publication. On the title-page of the original work, or on some conspicuous part of the same, the author must state that he reserves the right of translation. Part of the authorised translation of a book must be published within one year, and the whole translation within three years, of the registration. The translation of dramatic compositions must be published within three months of the registration. A copy of the translation, which must be registered, must be deposited at the Stationers' Hall within a period fixed by the Order. Each part of a book published in parts must be registered within three months of first publication named in the Order.

PENALTIES AND LIMITATIONS.

GREAT BRITAIN.—Every one not being the author or proprietor of the copyright, who, without the author's or proprietor's consent in writing, in the British dominions prints or causes to be printed for sale or exportation any copyrighted book; imports into the British dominions for sale or hire any unauthorised reprint of such book; or sells, lets, publishes either himself, or through another, or has in his possession for sale or hire any unlawfully printed or imported book, is liable to an action.

If any one, not being the author, or some one authorised by him, imports into the British dominions an unauthorised reprint of a British copyrighted book made out of the British dominions, or who knowingly lets, sells, or has in his possession for hire or sale any such reprint, he shall be fined 10*l.* on conviction before two justices for every such offence, and forfeit double the value of every copy of the book in respect of which he offends; every such copy shall be seized by any Customs or Excise officer and by him destroyed. All unlawfully imported copies of a book are declared to belong to the owner of the copyright.

It is doubtful how this is to be reconciled with the enactment as to the destruction of such copies just set forth.

Her Majesty is empowered to suspend, by an Order in Council, the prohibition of importation of illegal reprints into the British dominions, as regards any colony that is willing to secure due protection to British authors of their rights in such colony.

The following colonies, among others, have taken advantage of this power conferred on Her Majesty:—Jamaica, Canada, Mauritius, Cape of Good Hope, Natal, Bermuda, &c ; but not Australia. India has a copyright law of her own nearly exactly similar to the British law.¹

Any one who, without the written assent of the owner of the exclusive right of performance, performs publicly at a place of public entertainment in the British dominions a copyrighted musical or dramatic performance, is liable to pay to the said owner 40s., or the amount of the benefit arising from the representation, or the damage sustained by the owner, whichever amount may be the larger.

Any one who copies a lecture not hitherto published as a book, and prints and publishes it

¹ Act No. xx. of 1847.

without the consent of the author, either alone or in any book or periodical (a newspaper, *e.g.*), or who knowingly sells any unlawfully printed lecture, forfeits one penny for every sheet of such printed lecture and all copies of the same, one-half to go to Her Majesty, and one-half to the informer.

Any one, being under an obligation to do so, who omits to deliver within the proper time a copy of a book to the libraries entitled to claim it, shall pay a maximum penalty of 5*l.* and the value of the book to be delivered.

UNITED STATES.—There is no penalty attached to the importation of unlawful reprints of copyrighted books; except in the case of maps, plans, and musical compositions. Every one is liable to an action for damages who, without the consent in writing of the owner of the copyright in any book signed by him before two witnesses, shall print, publish, or import, or knowingly sell any copy of such book; and he shall forfeit every copy to the owner of the copyright. No action may be brought before registration, nor if the offence took place before registration.

In the case of musical compositions, maps, and plans, in addition to the above remedy it is provided that the offender shall forfeit the plates

for printing, and one dollar for every printed sheet in his possession. Any one who publicly performs a copyrighted play without the consent of the owner of the right of performance, is liable to an action for damages, which must not be assessed at less than one hundred dollars for the first performance, and fifty for the second. This only applies to plays copyrighted under the statute; otherwise the owner has his common law action for damages, and no minimum is fixed.

In the British dominions forfeitures and penalties must be recovered within one year from the commission of the offence; except in the case of non-delivery to the British Museum and other libraries.

Actions for damages are not thus limited.

With regard to special penalty of 10*l.* for illegally importing (see p. 27), to be paid on conviction before two justices, it is probable that that can be recovered at any time.

In the United States penalties and forfeitures can be recovered within two years from the commission of the offence. Actions for damages and injunctions are not thus limited.

For the conventions between Great Britain and foreign countries, and Orders in Council, see the Appendix,

LITERARY AND DRAMATIC COPYRIGHT IN THE FRENCH REPUBLIC.

ENACTMENTS AND AUTHORITIES.

THE earliest copyright law in force in France is the decree on dramatic copyright of January 13-19, 1791; the next most important law after that is the decree on literary copyright of July 19-24, 1793. The latest enactment is the statute on the rights of the heirs of an author, passed on July 14, 1866. Between the earliest and the latest a great number of decrees, laws, and orders have been issued. The reader will find a full collection of them in the second volume of the 'Étude sur la Propriété Littéraire,' par F. Worms, Avocat, Paris, 1878, 2 vols. That book, the 'Répertoire Général de Jurisprudence,' tome x. pp. 445, *et seq.* and M. D. Dalloz's 'Jurisprudence Générale,' tome xxxviii. pp. 441, *et seq.* have been my chief authorities in compiling this short statement.

LITERARY COPYRIGHT.

By this term I denote the right of printing and publishing any literary, musical, or dramatic composition, as distinguished from the right of performing or reading the same in public. Of the latter right I shall speak under the heading of Dramatic Copyright.

In France the statute law covers the entire field of copyright, there being none except under the statutes, and is in force in France and her colonies and possessions.

WHAT MAY BE COPYRIGHTED.

‘Books’ shall mean every book, printed sheet, volume, part, or sheet of music separately published. (Artistic copyright is assimilated generally to literary copyright in France; but I limit my observations to those objects of copyright of which I have treated in dealing with the system of copyright law obtaining in other countries.) Every original book and manuscript may be copyrighted, unless it be otherwise determined on grounds of public policy. Seditious, blasphemous, or immoral books may be copyrighted to the

extent that the author thereof may restrain any one else from publishing them.

Every book is original if it is the product of a man's intelligence and labour, or of his imagination. Copyright extends to every book of which a material part is the work of the author's mind. The originality may be in the arrangement, as in a compilation, an arithmetic ; or in the choice of materials, the ideas set forth, the language in which they are set forth, &c. An arrangement of an air or theme, with variations and introduction, can be copyrighted as an original work.

The following compositions have been held to be covered by the words *écrits en tout genre*. Writings of every description ; the descriptive words used in the law of July 19, 1793 ; a plan of the Chamber of Deputies, showing the places occupied by the different deputies ; a synoptical table of the Budget ; newspaper and magazine articles ; a translation ; an abridgment ; a compilation, in the making of which the writer has used his own judgment, skill, and taste ; notes and additions to a book which is public property ; a private lecture, whether printed or not ; public lectures ; speeches delivered in Parliament, courts of justice, or at public meetings ; private letters.

Reports of public lectures and speeches may

be published in newspapers without authorisation, but not separately. Official letters, proclamations, circulars, &c., the statutes, and the decisions of courts of justice are public property.

TO WHOM COPYRIGHT MAY OR DOES BELONG.

Copyright in a book belongs primarily to the author : he is presumed to be the author in whose name the book is published ; and no legal disability arising from marriage (when the author is a woman), infancy, bankruptcy, or interdiction, will prevent the vesting, though it may affect the exercise, of this right. Foreigners and Frenchmen enjoy the right equally.¹ If a book be written by several authors jointly, they enjoy jointly copyright therein, if the book be an indivisible whole. If one of these authors die, the survivors are trustees for the representatives of the deceased. Where an editor or publisher engages several authors to contribute to a publication, such as a magazine, dictionary, an encyclopædia, &c., he will be considered as the author of the work ; and the contributors, though allowed to republish their contributions alone or in their collected works, will not be allowed to republish them in

¹ As to foreigners see note 1, p. 36 *infra*.

any work of the same nature as that in which they originally appeared. The editor or publisher of the work has not the right to republish any article separately. A newspaper is in the same position as a magazine, &c. Copyright will vest in a corporate body if it be the real author of a work, or the assignee thereof; but not if a work be merely published under its supervision or by its authority. The children, widow, heirs, or assignees (French or foreign) of the author may become entitled to his copyright under certain circumstances.

The possessor of a manuscript written by another has not necessarily the right of publishing the same; but there is a presumption in favour of his having such right. The receiver of a letter cannot publish it without the writer's consent.

TRANSFER OF COPYRIGHT.

No instrument in writing is necessary to transfer copyright in France. The validity and effect of the transfer are decided by the general principles of law. The copyright may be transferred before the book is published. The author's intention of parting with the copyright in his book must be shown very clearly by all the cir-

cumstances of the case. The transfer may be limited as to time or the number of editions, and may extend to the whole term for which copyright is granted, including that part of it which would, but for such transfer, vest in his widow, children, or heirs. If the transfer be of the copyright (*propriété littéraire*) generally, it will be presumed that it extends to one edition only.

An author's manuscripts are not liable to be seized in any civil process, nor can they be the subject of any bankruptcy proceedings. But his copyrights in published books are not thus exempted.

CONDITIONS PRECEDENT TO THE VESTING AND EXERCISE OF COPYRIGHT.

It is not necessary that the work should be first published in France in order to secure copyright therein. Frenchmen and foreigners, first publishing abroad, may secure French copyright by depositing two copies of their printed work at the Ministry of the Interior in Paris, or with the secretary of the Préfecture in the departments.¹

¹ This law, in the case of foreigners, may be modified by any convention concluded between France and a foreign country. As to the effect upon it of the Anglo-French convention, see the Appendix, p. 103.

This deposit is a condition precedent to an action for damages, for piracy, or a criminal prosecution for the same. Yet, as regards the latter, the public authorities are at liberty to institute one, whether copies of the original work have been deposited or not. The deposit is not a formality on which the existence of copyright depends, though the remedies for an infringement are, to the extent above stated, dependent thereon.

It will be seen, from what we have said above, that the whereabouts of the author's domicile is of no consequence so far as copyright is concerned. It is not necessary that a work be printed or published for copyright to vest, since the statutes protect manuscript unpublished works.

HOW COPYRIGHT IS INFRINGED.

It is an infringement of copyright to publish without the authority of the author any 'book' (as defined at p. 32), or any material part thereof. A material part is such a part as would, by its reproduction, seriously damage the sale of the work whence it was taken. It appears to be necessary to show that the alleged piracy has damaged, or is likely to damage, the owner of the copyright alleged to be infringed. It is an in-

fringement to publish without authorisation an abridgment of a copyrighted work, or a translation thereof. It is an infringement to use the title of a copyrighted work. Newspapers may take bare news from each other; but they may not take anything which is of literary value. It is an infringement to publish an analytical table of the contents of a book if it show the plan and the principal facts related therein. It is not an infringement to take from a work of fiction the plot of a play; but it is otherwise if the dialogue of the play be taken from the work of fiction. It is immaterial by what means the illicit reproduction be effected. Thus, to copy the parts of a play in manuscript for the use of theatres would be an infringement; though, of course, the manager of a theatre who has acquired the right of performing a play, &c., may have the parts copied out for the use of his own company.

DRAMATIC COPYRIGHT.

By this term I denote that use only of a literary or musical composition which consists of the public playing, reciting, or performing thereof.

The chief compositions capable of this use

are musical compositions,¹ operas, and plays. The author of any such composition has the right of performing the same, whether it be in manuscript or be printed and published. It is coextensive as to time with the right of publishing the composition as a book; but the two rights are separable. The author may assign one and keep the other. As a rule, a transfer of copyright will be held to be limited to the literary copyright if made to a publisher, and to the dramatic copyright if made to a theatrical manager. If the play, &c., be in manuscript it need not be deposited, but if it be printed and published it must be deposited, before an action or other proceedings for infringement can be instituted.

The composer of the incidental songs, &c., for a play is owner of the dramatic and literary copyright in them, and they cannot be performed without his permission. If an author and composer write an opera together, they are co-owners of the dramatic and literary copyright in the same. Neither alone can authorise a performance of it, or of any part, musical or otherwise, of it.

The dramatic copyright in any play, opera, or musical composition is infringed by any unau-

¹ This includes songs, music for all instruments, orchestral music, and incidental music composed for a piece.

thorised public performance of the same, or of any part thereof. The public reading, without scenic effects, of a play is not a public performance ; but if damages can be proved, the author of a play is entitled to them as against any one publicly reading his play. The fact that admission to the theatre, concert, or lecture-room is free, does not remove the character of illegality from the performance.

The author of a lecture has the sole right of delivering it, be it manuscript or be it printed.

If a manuscript play, opera, or musical performance be first performed out of France, the dramatic copyright therein can only be protected in France by a copyright convention between France and the country wherein it was first performed, until it be published and deposited as a book in France.

If first published as a book in France, it matters not where the first performance takes place.

DURATION OF COPYRIGHT.

The literary and dramatic copyright endures for the life of the author and for fifty years afterwards.

This copyright is subjected to the same rules as to bequest, gift *inter vivos*, assignment, as ordinary

property; except that if the author die, leaving a widow, without having assigned or bequeathed his copyright, the widow shall during her lifetime have the usufruct or enjoyment of the same, the bare property remaining in the author's heirs. If the wife has been separated from her husband (*séparation de corps*), she will not be entitled to this enjoyment.

If the copyright escheat to the State for want of heirs, it will become extinct, without prejudice to the claims of creditors, or to the performance of any contract to assign which may have been entered into by the author or his representative.

PENALTIES.

WHOEVER is guilty of the offence of piracy, or imports piratical copies of any book, is liable to pay a fine of from 100 to 2,000 francs (4*l.* to 80*l.*). Whoever knowingly sells piratical copies of any book is liable to pay a fine of from 25 to 500 francs (1*l.* to 20*l.*).

The pirate, importer, and seller shall deliver up all piratical copies in their possession, which shall be handed over to the owner of the infringed

copyright to indemnify him for the damage occasioned to him. If the sale of the copies so handed over shall not produce a sum sufficient to cover the damage, or if there be no copies to sell, the owner of the copyright shall be indemnified according to the ordinary rules of law.

If the manager or lessee of a theatre, concert-room, &c., or a company of actors, perform or cause to be performed, without the formal consent of the author or composer, any dramatic or musical composition, he or they shall be liable to pay a fine of from 50 to 500 francs (2*l.* to 20*l.*). The receipts shall be confiscated and dealt with as the pirated copies of a book are dealt with.

If there appear to the court to be extenuating circumstances in the offender's case, the fine may be reduced.

LITERARY AND DRAMATIC COPYRIGHT IN THE GERMAN EMPIRE.

THE law rests on a statute of June 11, 1870,¹ which now applies to the whole Empire, including Elsass and Lothringen. The following is a translation of the same:

1. The right of mechanically reproducing a literary work (*Schriftwerk*) belongs exclusively to the author of the same.

Note.—No definition of literary work is given in this statute; and the commentators seem to leave the matter to experts, and merely say that it must be the product of ‘intellectual activity or labour,’ and that it covers unwritten lectures as well as written works.

2. The editor of a work consisting of contributions by two or more authors will, for the pur-

¹ Gesetz betreffend das Urheberrecht an Schriftwerken, Abbildungen, musikalischen Kompositionen und dramatischen Werken, vom 11. Juni 1870. I have referred chiefly in making the following summary to Dr. W. Endemann’s annotated edition (Berlin, Kortkamp, 1871), and Dr. R. Klostermann’s (Berlin, Guttentag, 1871).

poses of this Act, be considered the author of the work, provided that the [contributions] together form one single book.

The author of each contribution retains his rights in the same.

Note.—This applies to works of which the parts, though forming a single book, shall be clearly distinguishable and separable. For a work to come within this section, the parts must be subordinated to the whole, and must be in furtherance of a general plan, and be constituent parts of the whole. Hence a magazine would not, but an encyclopædia would, fall within this section.

Of course the authors can, under the next section, assign their rights to the editor. If not, they enjoy protection for the term granted by section 8.

3. The author's rights go to his heirs on his dying intestate. These rights can be partially or totally bequeathed or assigned.

Note.—The assignment or bequest may be limited either as to time or place. They can be exercised for the benefit of his creditors in the case of bankruptcy.

4. Every mechanical reproduction of a literary work not authorised by the owner of the copyright is called piracy, and is forbidden.

It matters not whether the whole or a part of the work be reproduced.

Copying [otherwise than by printing] is to be considered as a mechanical reproduction if it be designed to take the place of print.

Note.—This last paragraph is no doubt intended to prevent the illicit copying of musical scores and actors' parts. Taken literally, it might have some extraordinary consequences.

5. Piracy is—

a. The unauthorised publication of manuscripts. The lawful owner of a manuscript may not publish it without the author's consent.

b. The unauthorised publication of lectures delivered for the purposes of culture, instruction, or entertainment.

c. A publication of any work by the author or the publisher in violation of any agreement subsisting between them.

d. The printing by the publisher of a larger number of copies of a book than is allowed by an agreement with the author or by law.

Note.—Paragraph *c.* covers every species of violation of contract by author or publisher, such as a publication beyond the time or space defined in the contract.

6. It is piracy, without the authority of the author or his heirs or assigns,—

a. To translate a book which has first appeared in a dead language, into a living language.

b. To translate a book which has appeared simultaneously in several languages, into one of these.

c. To translate a book of which the author shall have announced his intention of reserving to himself such right either on the title-page or at the head of the book ; provided that an authorised translation be commenced within one and finished within three years of the publication of the original, exclusive of the calendar year in which the publication took place.

Every separately published part or volume of a work will be considered, for the purpose of this section, a separate book.

In the case of a dramatic composition the authorised translation must be published within six months from the publication of the original.

The date of the commencement and the end of the translation must be registered.

It is piracy to translate an unpublished manuscript.

Translations enjoy the same protection against piracy as original books.

Note.—The author can assign his right of translation as regards one language and not as regards

others. The authorised translation mentioned in paragraph *c.* will only protect the author against a translation into the language in which the authorised translation appears.

7. It is not piracy—

a. To copy literally isolated passages or small portions of a published work, or to embody published writings of narrower scope into a larger whole (*grösseres Ganzes*) if this be primarily an independent scientifically conceived work (*Wissenschaftliches Werk*), or to compile from the works of several authors books for church, school, or educational purposes, or for any particular literary object; provided always that the name of the author or the book used be given.

b. To republish single articles from periodicals and public journals, except articles of fiction, or scientific articles, and other longer contributions (provided it is stated at the beginning of these last that republication is forbidden).

c. To republish codes, laws, official decrees, public legal documents, and reports of all kinds.

d. To publish reports of speeches delivered at political and public meetings, in judicial proceedings in Parliament, at meetings of communal, ecclesiastical, and other bodies.

8. The protection against piracy granted by

this law, endures from the publication of the book till thirty years after the death of the author.

Note.—As copyright in an unpublished manuscript is the right to prevent publication, it commences the moment there is any manuscript to publish.

9. In the case of a work by several co-authors, the term of protection endures from the publication of the work till thirty years after the death of the author who shall last die.

If the work be made up of contributions by several authors (see section 2), the period of protection is reckoned according as the names of the authors be published or not (see section 11, paragraph *b.*).

10. Separate articles, essays, &c., which have appeared in periodicals, almanacs, [newspapers], annuals, &c., may be reprinted by the author without the consent of the editor or publisher of the periodical, &c., after the lapse of two years from the date of [completed] publication of the same.

Note.—This is exclusive of the calendar year in which the article has appeared.

11. *a.* Section 8 is only applicable to works or writings when the author of the same has printed

his real name on the title-page, or at the end of the preface or dedication of the same.

b. If the work be made up of contributions by several authors (section 2), it will suffice that the name of the author be printed at the beginning or the end of the contribution.

c. A work to which a pseudonym or no name is affixed will enjoy protection for thirty years from the first publication of the same. If within the thirty years the real name of the author be entered by himself, or his assigns or heirs, in the registry-book (*Eintragsrolle*), the term of protection will be extended to that granted by section 8.

Note.—As regards paragraph *b*, it seems that it matters not how the name be given; it may be given on the title-page to the whole work, or in the preface, &c. If the names of the different contributors are not given, the copyright of the whole work will vest in the editor, and be for the term granted by section 8.

12. Copyright in posthumous works lasts for thirty years from the death of the author.

13. Academies, universities, and other corporate bodies, public educational institutions, and learned and other societies, can claim protection for works as to which they are in the position of

editor under section 2, for thirty years from the publication of the same.

Note.—As to the contributors to the work, see section 12. *b* and section 2.

14. In the case of works appearing in several parts or volumes, the term of copyright will be reckoned from the appearance of each separate part or volume. But if the work, though in several parts or volumes, forms a connected whole and can be regarded as a single work, then the term will be reckoned from the appearance of the last part or volume. If between the appearance of any two parts or volumes more than three years have elapsed, all the parts or volumes which appeared before the cessation will be considered as forming a single work, and all those appearing afterwards as forming another single work.

15. The protection against unauthorised translations endures in the case of section 6. *b* for five years from the publication of the original work, and in the case of section 6. *c* for five years from the publication of an authorised translation.

16. In measuring the periods of protection fixed by sections 8 *et seq.*, the year of the author's death, and the calendar year in which the original

work or translation appeared, are not to be reckoned.

17. In the event of a failure of persons entitled to the copyright in a book, the Crown does not succeed to the ownership of the copyright.

Note.—It will become public property when the rights of the publishers [if any] have lapsed or been satisfied. It seems that if there is a failure of heirs to a publisher's estate, all the publisher's rights in the book will revert to the author or his heirs.

18. *a.* Whoever intentionally or negligently piratically (sections 4 *et seq.*) prints or causes to be printed a book with intent to publish or sell the same in any country, must compensate the author or his assigns for damage done, and is liable to a fine not exceeding 1,000 thalers (150*l.*).

b. When the party has proceeded *bonâ fide* under a mistake of law or fact sufficient to excuse him he is not liable to any fine or imprisonment [though he is to compensation].

c. If the fine cannot be levied, a maximum term of six months' imprisonment can be substituted, in accordance with the provisions of the criminal code (*Strafgesetzbuch*).

d. Instead of any compensation to be awarded under this Act, the court may, on the application

of the plaintiff, order the defendant or defendants to pay to the plaintiff a penalty not exceeding 2,000 thalers (300*l.*). When two or more defendants are ordered to pay any such penalty they are joint debtors. The award of such a penalty is a bar to any further claim to compensation.

e. If the defendant has acted as in paragraph *b*, he is only liable to the plaintiff to the extent of the profit resulting from the publication.

Note.—In case of paragraph *b*, although the defendant be not liable to fine or imprisonment, yet in any civil proceedings against him a mistake of law will be no defence. As to paragraph *c*, see sections 27, 30, and 78 of the *Strafgesetzbuch*. As to paragraph *d*, see sections 188 and 231 of the *Strafgesetzbuch*. It follows from section 4 that the author of a book may be proceeded against under this section.

19. It is for the court to determine what damages and what profits have arisen from the piracy.

20. Whoever intentionally or negligently (*aus Fahrlässigkeit*) causes or induces another to commit a piracy, is liable under sections 18 and 19, even if the person so caused or induced be not liable under section 18. But if the person caused or induced has also acted negligently or intention-

ally, both he and the person who caused or induced are jointly and severally liable to the plaintiff. The liability of other parties to the piracy is regulated by the ordinary provisions of the law.

Note.—The innocent publisher of a piratical work supplied to him by another, would be protected by this section, provided he did not show culpable negligence. (See also sections 47–50 of the *Strafgesetzbuch*, dealing with incitement to crime and accessories.

21. All the available copies of the pirated book, and the apparatus solely used for the unlawful multiplication of copies, such as the formes, stereotypes, &c., are liable to seizure. When the order for seizure has been issued against the owner of the apparatus, it may be either destroyed, or returned to the owner when it has been broken up and rendered useless.

If only part of a book is piratical, the seizure extends only to the apparatus used to produce such part.

The copies of the book and the apparatus may be seized when they are the property of the pirate himself, or the printer, the bookseller, or he who has caused or induced (section 20) the piracy.

Seizure may even take place when neither

the person who actually commits nor the person who induces the piracy has acted carelessly or with a piratical intent, and it may be enforced against their heirs.

The injured party may take over wholly or in part the seized copies or apparatus on payment of the cost of restoration, provided that the rights of third parties are not thereby infringed or endangered.

Note.—The order for seizure must be made by a court, and against a specific person. It must be shown by the party seizing that the printing apparatus has been used, or is to be used, solely for the production of the pirated copies.

22. The offence of piracy is complete when a single copy of the book has been turned out complete, whether in or out of the German empire.

In the case of a mere attempt at piracy there is no liability to a fine or to compensation. But there may be seizure of copies and apparatus (section 21).

23. The penalties and punishments fixed by section 18 are not increased for a second offence.

24. When the source whence an extract is taken (see section 7. *a*) or the name of the author is intentionally or negligently omitted, the pirate, or

he who has induced the piracy, will be liable to a maximum fine of twenty thalers (3*l.*).

25. Whoever knowingly exposes for sale, or otherwise disposes of by way of trade within or without the German empire, any copies of a pirated book is liable to the author of the original work, or his legal representative, for compensation for damage occasioned by him, and is liable to a fine under section 18.

The seizure of copies to be disposed of in the way of trade (section 21) may be ordered even where the seller has not acted with a piratical intent.

The pirate, or he who induced the piracy, when not liable as such, may be liable under this section.

Note.—If the seller and the pirate, &c., are one and the same person, he can only incur a penalty under section 18 once.

MAPS, PLANS, ETC.

26. The provisions of sections 1–26 and 40–50 are applicable to geographical, topographical, scientific, architectural, technical, and other drawings and designs which are not artistic as regards their object.

27. It is not piracy to reprint in a book single

drawings or designs from another work, provided that in the book in which they are reprinted the literary text is the most important part of it, and that the drawings are merely used for the purposes of explanation, &c. The name of the draughtsman of, or the source whence the drawing is taken must be given, or the provisions of section 24 will be applicable.

MUSICAL COMPOSITIONS.

28. Sections 1-5, 8-25, and 40-50 are applicable to musical compositions.

29. It is piracy to publish, without authorisation, any arrangement of a musical composition which cannot be considered as an original composition; especially extracts from a composition, arrangements for one or more voices or instruments, or the working of single motives or melodies, from one and the same work, into an arrangement which is not artistically executed.

Note.—‘Working of single motives,’ &c. This refers presumably to quadrilles, *e.g.*, made out of an opera, pot-pourris, &c., if these are not ‘artistically executed.’ Such vague phrases seem calculated to provoke endless litigation.

30. It is not piracy, without authorisation to reproduce single passages from a published

musical composition; to embody small musical compositions into a larger work which is primarily an independent scientifically conceived work, or is destined for use in schools other than music schools. Provided always that the name of the author or the source whence taken be given, otherwise the penalties in section 24 will be incurred.

Note.—The chief feature of the ‘scientifically conceived’ work must be the literary portion, and not the musical extracts. It will be noticed by the reader that these school collections of music are only to be used in schools other than music schools.

31. It is not piracy to publish copyrighted words which have been set to music, provided the words be always published with the music and not apart.

This rule does not apply to such words or texts as acquire significance only when set to music, such as the libretti of operas or oratorios. Words or texts of this description can only be published with or without music by permission of the author thereof.

Note.—It is difficult to see the exact meaning of the second paragraph of this section if it be read literally. It will probably be held to cover such

literary compositions as are intended to be set to music.

32. The colleges of experts (*Sachverständigenvereine*), established by section 43, who will have to give opinions in musical cases, are to consist of composers, musical experts (*Musikverständigen*), and musical publishers.

THE RIGHT OF PERFORMANCE OF DRAMATIC, ETC., WORKS.

33. *a.* The right of publicly performing a dramatic, musical, or dramatic-musical work belongs exclusively to the author thereof or his legal representatives (section 3).

b. With respect to dramatic or dramatic-musical works, it is indifferent whether or not they have been printed and published before performance. Musical works which have been so printed and published may be publicly performed without the composer's authority, if the composer has not signified his intention to reserve the right of performance on the title-page or at the beginning of the work.

c. The author of a lawful translation of a dramatic work will, with regard to the right of performance, be considered as the author of an original work.

d. It is forbidden to publicly perform any unlawful translation (section 6) or arrangement (section 29) of an original work.

Note.—There is nothing to show what kind of performance is unlawful, beyond that it is defined as a ‘public’ one. Whether a reading by one or many without scenery, or the playing of an opera by an orchestra without any singing, would be held to be a performance, is doubtful. It seems more likely that it would not; for the official reports on the subject show that the legislature intended chiefly to protect the author’s pecuniary interests, which would not be much injured by any such mutilated performance.

As only works of a dramatic or musical character are protected, it follows that poems, novels, histories, may be publicly read without authority with impunity.

Dramatic-musical works, recent operas, oratorios, cantatas, &c.

34. If a work is by several authors, the consent of each is necessary to a public performance. In the case of songs and dramatic-musical works the consent of the composer alone is necessary.

35. The duration of the exclusive right of public performance is regulated by sections 8–17.

In the case of anonymous or pseudonymous

works not printed and published at the time of their first lawful public performance, the copyright endures for thirty years from the day of such performance, and in the case of posthumous works for thirty years from the death of the author.

If within the said term of thirty years the author or his lawful representative or assigns make known the real name of the author of any anonymous or pseudonymous work by entering the same in the registry-book (section 49), or if the author publishes in his real name within the said term of thirty years, section 8 will be applicable.

36. He is to be presumed to be the author of any dramatic, musical, or dramatic-musical composition, copies of which have not been mechanically multiplied, who is announced as the author at the first performance.

Note.—Of course this presumption may be rebutted.

37. Whoever intentionally or negligently performs publicly a dramatic, musical, or dramatic-musical work, either in its entirety or with merely colourable alterations, is bound to compensate the author or composer thereof, or his heirs or assigns, and will be liable to the fine imposed by sections 18 and 23.

Whoever causes another to give an illegal performance will render himself amenable to section 20, the compensation to be in accordance with the provisions of section 38.

38. The compensation mentioned in the last section is to consist of the whole receipts of the performance without deduction of expenses.

If several pieces or compositions were performed on the same occasion one or more of which were illegally performed, a proportionate part of the receipts is to be given as compensation. If the amount of the receipt be not ascertainable or if there be no receipts, the court shall fix the amount of compensation. If the person giving the performance has acted without fraud or negligence, he is answerable to the owner of the copyright to the extent of his net profits.

39. The provisions of sections 40-50 are also applicable to the performance of dramatic, musical, or dramatic-musical compositions.

PROCEDURE, ETC.

Under this head I shall give a slight sketch of some of the mechanism specially designed for the trial of copyright questions.

40. Criminal proceedings are only to be commenced at the instance of the aggrieved party ;

is kept at Leipzig. Every one is at liberty to inspect it. For every entry or extract therefrom a fee of 15 sgr. (1s. 6d.) is charged. The registrar is not bound to inquire into the accuracy of any facts sought to be entered. The entries will be published in the 'Börsenblatt' for the German book trade at the expense of the persons making entries.

50. The provisions of this law are applicable to all works of native authors whether published in or out of the German empire, or whether published at all or not. Works by a foreigner, which are published by a firm having its place of business within the German empire, are protected by this law.

Note.—It will suffice if the firm have merely a branch office in the German empire.

LITERARY AND DRAMATIC COPYRIGHT IN ITALY.

THE law of copyright rests upon two statutes and an order regulating the carrying out of the same. The statutes are the *Leggi sui diritti spettanti agli autori delle opere dell' ingegno* of June 25, 1865 (No. 2337), and August 10, 1875 (No. 2652, 2nd series). The order is numbered 2680, 2nd series. The first deals with literary copyright, the second with dramatic copyright, and the third approves an order containing regulations for the carrying out of the first two laws.

LITERARY COPYRIGHT.

LITERARY, dramatic, and musical works may be copyrighted if they be original; and manuscript works are protected against unauthorised publication. A translation of a literary or dramatic work is original for the purposes of the copyright statutes. Lectures may be copyrighted;

but forensic and parliamentary speeches, though they may be reported in the newspapers and published in the official reports of the courts or the parliament, may not be republished as the speeches of an individual, nor in the collected works of the speaker. Newspaper and magazine articles may be copyrighted. A new edition of a work, however modified or enlarged, cannot be considered as a new work. The Italian courts are not so ready as the English and French courts to grant the protection of the copyright laws to compositions which are to a certain extent mechanically produced, such as, *e.g.*, a comparative table of old and new weights and measures. As in France, the title of a book is protected by the copyright laws.

The state, provincial governments, parishes, academies, and literary and scientific bodies may own copyrights in collections of their 'Transactions,' or in other works published by them. The individual authors of the same retain the right of separate republication of what they have written, on condition of mentioning whence they are republished. When two or more persons are joint authors of any work, they enjoy the right jointly. Each may exercise the right, but must compensate his fellow-authors for any loss of

profits. When one co-author assigns the copyright, the assignee and he will be jointly liable to make this compensation, if the assignee took with notice of the joint authorship.

The composer of an opera may assign it together with the libretto, and authorise the performance or publication thereof, but he must compensate the author of the libretto for any loss of profits. The latter has no converse right. The originator or editor of a work composed of separable parts but forming a homogeneous whole, has the sole right of reproducing and selling the same. But the authors of the parts may reproduce the same separately, on condition of mentioning the source whence they are taken.

The author of a dramatic work has the sole right of authorising public performances thereof.

With regard to the authors of works first published abroad the following is applicable. The present laws are applicable to the authors of works [first] published in a foreign country, between which and Italy there is no, or there has ceased to be any, special copyright treaty.

The duration of literary copyright is regulated in the following manner. It endures for the life of the author and forty years after his death, or for eighty years from the publication of

the work ; the term of years being divided into two periods of forty years each. If the author dies within the first period of forty years the remainder of the term is enjoyed by his heirs or assigns. The second period of forty years begins at the death of the author if he has died after the first period of forty years has elapsed ; or, if he has died before then, at the end of the first period of forty years. During the second period any one is at liberty to republish the work on payment to the owner of the copyright of a royalty of five per cent. on the price, which must be marked on the work. This royalty must be paid before any other claim in regard of the books is satisfied.

The state, academies, &c., enjoy copyright in works published by them, for twenty years from publication. The owner of any copyright has for the first ten years from the publication of the work, the sole right of authorising a translation thereof.

In the case of works published in several parts or volumes, unless all of them are published within the same year, each will be treated as a separate publication.

Dramatic copyright or the right of performance endures for eighty years from the first

performance or publication of the dramatic or musical composition, whichever occurs first.

Whoever wishes to secure copyright in a work must deposit, at the prefecture (*prefettura*) of the province in which he is domiciled, two copies of the work, together with a declaration in duplicate, stating that he wishes to reserve the right of republication, and the title, and the place and date of publication of the work, and the name and address of the author. Works divided into several parts, such as encyclopædias, &c., may be the object of a single declaration. In the case of a dramatic work the declaration must state whether it has been performed or not. It is not necessary to deposit a dramatic composition which has not been printed. A declaration must be made out, and the manuscript presented to be *visé*. Works in more than one volume are to be deposited volume by volume, if they do not all appear within the same year. Writers in journals or periodicals may secure for themselves the copyright in their contributions by stating their intention to do so at the head thereof. An omission of this statement will enable other papers and periodicals to reproduce such contributions, providing they state the source whence they are taken; but it will not enable any one to repub-

lish them separately without the author's consent. If the author or his representative wishes to republish contributions to a magazine or periodical separately, he must make a deposit of the republished work and a declaration, showing in the latter when and where the work was originally published, and within what dates, if not published in a single number of the paper or periodical. The deposit and declaration must be made before the end of the month of June, in the case of works published before December 31 in the preceding year. If the deposit and declaration are made after this, they will be thoroughly effectual, provided no one has between June 30 and the making of the deposit and declaration republished the work without authorisation, or imported from abroad any unauthorised copies of the same. If the deposit and declaration are not made within ten years from the first publication of the work, the work becomes public property.

Dramatic compositions must be deposited and declared within three months of the first publication or performance of the same. If the work has not been deposited, &c., within the three months, any subsequent deposit, &c., will be effectual, provided that between the end of the three months and the subsequent deposit, &c., no

one has published or performed the piece, or imported unauthorised copies of the same.

A list of the declarations and deposits made within the first six months of each year, is published in the gazette of the kingdom ('Gazzetta Ufficiale del Regno'). Any person wishing to republish a work on the payment of a royalty (see p. 69), must make a written declaration at the prefecture stating his name and address, the work which he wishes to republish, the number of copies of the same that he intends to publish, and the price at which it will be published. In the declaration he must further offer explicitly to pay to the party entitled to the royalty the sum of 20 per cent. upon the sum of the price of each copy multiplied by the number of copies printed.

These declarations must be inserted at least twice at the declarant's expense, with an interval of fifteen days between the two insertions, in a paper where legal notices are inserted, published at the place where the work is to be republished, and in the 'Gazzetta Ufficiale del Regno.' The declarant must deposit at the prefecture copies of the newspaper in which the declarations have appeared.

The fee on making any of the above declarations is ten *lire* (about eight shillings). The

official whose duty it is to receive copyright declarations must endorse both declarations with the date and place when and where it was made, &c., and enter a copy of this endorsement in the register-book to be kept at each prefecture. Within three days of the deposit and declaration being made, one of the declarations endorsed, together with one of the deposited copies, and a receipt for the declaration fee must be forwarded from the prefecture to the Ministry of Agriculture, Industry, and Commerce. The other endorsed declaration must be returned to the declarant, and the other deposited copy of the work must be placed in the library of the province wherein the deposit, &c., is made; or, if there be no library there, in the archives of the prefecture. A receipt for this copy shall be forwarded to the Ministry, together with the declaration, &c.

The fee for obtaining copies of or extracts from the documents deposited at the Ministry of Agriculture, &c., or from the register-book there kept, is five *lire* (about four shillings); the extracts, &c., to be written on paper bearing a one *lira* stamp.

The copyright in any work may be transferred like any other right. Nevertheless it cannot be transferred by way of execution, while it remains

vested in the author. If the right is vested in one or more authors, and in a third party who is not an author, it may be seized as against those who are liable to any civil process, and the others will have a right to claim a share in the proceeds of the sale of the right equivalent to their respective shares in the copyright. In this way the right of publishing an unpublished work may be dealt with, if it should appear on written or other proof that the author had already intended to publish the work. This intention cannot be proved by oral testimony. A general authorisation to publish an unpublished work does not in itself amount to an assignment of the whole term of copyright. In such a case the court will fix a period during which the author shall not be allowed to republish the work to the detriment of the publisher.

A copyright may, excepting in the author's lifetime, be acquired by the state, a province, or a commune, by means of expropriation for the public benefit (*in via di espropriazione per causa di pubblica utilità*). The decree of expropriation is issued on the proposition of the Minister of Public Instruction, and with the assent of the Council of State. The indemnity to be paid to the owner of the copyright is fixed by three ex-

perts nominated by a court in default of an amicable agreement being come to.

He is guilty of illegal publication who publishes a work by another without his or his representative's or assignee's consent.

He is guilty of piracy (*contraffazione*) who reproduces, by any means whatsoever, a work in which the author's exclusive copyright is still existing; or who exposes for sale, or sells, unauthorised copies of such a work; who omits to make a declaration before publishing a work on the royalty system (see p. 72); who reproduces or sells a larger number of copies of any work than he has acquired a right to reproduce or sell; or who performs a piece or opera without authority while the copyright therein is still existing.

Piracy may be committed by printing copies of a published or unpublished work, or transcripts of lectures taken down in shorthand; by printing or publishing by any similar means dramatic or musical compositions performed publicly, but not printed and published. It is also piracy to perform publicly without authorisation an unrepresented dramatic or musical composition; and to arrange without authorisation musical works, or portions thereof, for different instruments, unless a particular movement of a musical work

be taken as a theme, and so elaborated as to become substantially an original composition.

Illegal publication and piracy are punishable with a maximum fine of 5,000 *lire* (200*l.*). The offending party may further be liable in damages to persons whose interests he has damnified, and to heavier punishment, in accordance with the terms of the penal code, if he has been guilty of theft or fraud.

The unauthorised copies and all the printing plant which can be shown to have been used exclusively for the production of the same must be destroyed, unless the injured party asks to have them made over to him in lieu of damages, or unless the offender asks to have them sequestered during the continuance of the author's copyright. The court must always accede to this last request, and give it the preference over that of the injured party. The destruction of the copies and plant will not be ordered if the author's copyright will expire within twelve months of the time when the order is applied for. In such a case the sequestration at the offender's expense will be ordered. When the author's right is to the payment of a percentage merely, the destruction of the copies and plant cannot be ordered

nor can sequestration, unless it be as security for the payment of the percentage.

It is not piracy to copy a general title of a book, such as 'Biographical Dictionary,' &c., nor to reproduce one or more passages from a work, unless an intention should appear to reproduce a portion of another's work to derive profit therefrom.

Political articles may be reproduced for the purposes of discussion, and critical articles may be reproduced, provided the source whence they are taken be indicated. But if the author has stated at the beginning of the article that he reserves the right of republication, it is piracy to reproduce the article without authority.

As regards works reproduced on payment of a percentage, if the insertions of the declaration in two newspapers (see p. 72) are omitted, or the work be published at a higher price per copy than was stated in the declaration, and no supplementary declaration stating the increase of price has been made before sale, the offender may be fined a maximum sum of 1,000 *lire* (40*l.*). This does not interfere with any right to an action for damages, or the payment of the percentage.

Any one knowingly making a false declaration

in any case where a declaration is necessary or is made, is liable to a maximum fine of 1,000 *lire* (40*l.*).

Any infringement of the above rules and enactments not specially mentioned may be punished by a maximum fine of 500 *lire* (20*l.*).

LITERARY AND DRAMATIC COPYRIGHT IN RUSSIA.

THE law of copyright will be found in the fourteenth volume of the code (*Svod Zakonov Rossiyskoy Imperiy*), in the seventh chapter of that part of it which deals with the censorship (*Ustav Tsensurniy*).

Every original work may be copyrighted in Russia. Translations, contributions to magazines or newspapers, manuscripts, the published contents of ancient manuscripts, collections of oral traditions, and ancient national songs, dramatic and musical compositions are considered as original works for the purposes of this law.

Copyright will vest in the author of any work and his heirs and assigns. The first publisher of an ancient manuscript, a translator (when acting legally), the first collector and publisher of ancient national songs are considered as authors. The publishers of periodical publications, including newspapers, or of works consisting of separate

contributions by different authors have the sole right of republishing the articles or contributions in that form and connection in which they originally appeared. But, in the absence of any agreement to the contrary, the author of any such article will have a right to republish his article separately.

The writer and the receiver of a private letter are joint owners of the copyright therein, and neither can publish it without the other's consent.

Corporate bodies, academies, and universities may own copyright in works which an author allows them to publish.

Copyright must be assigned or transferred by an instrument in writing, stamped, and registered in a notary's books (*Maklarskoy knigé*). In the absence of any special agreement, the publisher-assignee of a copyright will only be able to publish one edition of a work; five years after the publication thereof, the author or his representative will be able to bring out a second edition of the work. They may do this at any time and notwithstanding any agreement to the contrary, if two-thirds of the new edition are new, or if the literary form of the work is so changed as to make the new edition substantially a new work. Manuscript and printed works can-

not be taken in execution without the consent of the author or his heirs. If a publisher's stock in trade is taken in execution, the manuscripts and copyrights belonging to him may be sold, but the purchaser must perform all the conditions which the publisher was liable to perform.

Copyright lasts for the author's life and for fifty years afterwards. If the works are posthumously published, the right lasts for fifty years from the first publication.

Academies, universities, &c., enjoy copyright in works published by them for fifty years from the publication thereof. If at the end of the fifty years the author is still living, he will enjoy the copyright as if he himself had published the work. If he be dead, the work will become public property. The authors of papers, essays published in the 'Transactions' of academies, &c., retain their right of separate publication.

It is piracy (*Samovolnoe izdanie*) for an author to bring out a second or other edition of a work of his own when that is not lawful (see p. 80), or for a publisher to bring out more editions than he has a right to bring out. It is piracy to import into Russia, or sell there, copies of works printed abroad (even with a translation), without the written consent of the authorised publisher of

the works. It is piracy to publish, without the author's authority, a speech or any other composition publicly delivered. It is piracy for the editor or publisher of a newspaper or periodical to reprint constantly extracts from other papers or periodicals, even if they do not fill one printed sheet (*List*). It is permissible, however, to republish articles occasionally (*Slutchayno*), provided they do not occupy more than one printed sheet, or political, scientific, or literary or artistic news, if the source whence these are taken is given. It is not piracy to collect extracts from different authors in school-books, although such extracts fill together more than one printed sheet. It is not piracy to publish passages copied from another work, if these do not together form two-thirds of the contents of a work containing more than one printed sheet; or if the copied matter does not form more than a third of the work in which it is reproduced. It is not piracy to translate a work first published in Russia, whether for the first time or not. If the work has already been translated, the second translator will commit piracy if he copies three-fourths or more, word for word and consecutively, from a previously-executed translation which is still in copyright. Authors of works, the composition of which has necessi-

tated special scientific researches, may reserve the right of translation by notifying their intention on the work. But if they do not themselves bring out a translation within two years of the publication of the original, they will lose their exclusive right of translation.

Whoever is guilty of piracy must pay to the owner of the copyright the difference between the cost of production of the pirated copies and the sum which they would realise on being sold at the price at which the originals are sold. He must further hand over all pirated copies in his hands to the owner of the copyright.

Whoever publishes another's work in his own name, or fraudulently sells the right of publishing a manuscript to several parties at once without the consent or knowledge of them all, is liable to deprivation of his civil rights, and exile to Siberia (section 2275 of the Penal Code—*Ulozheniya o nakazaniyakh*).

The publisher of a new edition must state on the title-page thereof of what edition it is a reprint, and whether or not it contains alterations.

The above rules are, as we have said, applicable to musical compositions; but there are a few special provisions of the code which are applicable to them only.

It is piracy to publish without authority, entirely or partially, a musical composition which has or has not been publicly performed ; an air with an altered accompaniment ; an orchestral piece arranged for a single instrument, or a piece written for one instrument arranged for a different one. It is piracy to perform publicly an unpublished musical composition. If it has been published it may (unless it be an opera or oratorio) be publicly performed without authorisation, if the right of performance be not reserved on the title page of the same. Operas and oratorios can in no case be performed without the authorisation of the composer. Piracy of a musical composition is punishable in the same way as piracy of a literary work ; but the pirate is liable to some further penalties. The stones or plates used to print pirated copies of musical works may be destroyed in the presence of the injured party, or handed over to him in part or full payment of the damage occasioned. In the case of an unauthorised performance of a musical work, the performer must pay to the owner of the copyright a sum equal to twice the amount of the gross receipts of the performance. A composer who assigns his copyright to a Russian publisher, and afterwards publishes his works abroad, is liable as

for piracy if he imports into Russia more than ten copies of any work so published abroad. These copies must be for his own use. The law protects from unauthorised performance and publication in Russia the works of a Russian composer published abroad. Foreigners enjoy this protection while they are resident in Russia. The performance of dramatic works is not regulated in Russia.

Proceedings in the case of piracy, &c., must be taken within two years from the arising of the cause of action if the plaintiff be resident in Russia; otherwise within four years therefrom. Pending the judicial proceedings, the sale of the work in dispute may be suspended by order of the court.

LITERARY AND DRAMATIC COPYRIGHT IN SPAIN.

COPYRIGHT in Spain is now regulated by the Act of December 10, 1878, the effect of which is as follows: Copyright can be claimed in scientific, literary, and artistic works, however published.

The right vests in (1) the author; (2) the translator, when the translation is not prohibited by any international convention, or if, being of a Spanish work, that work is out of copyright, or the owner of the copyright has authorised the translation; (3) those who touch up, copy, make extracts from, abridge, or reproduce original works, provided that, if these be Spanish works, the author's permission has been obtained; (4) the publishers of hitherto unpublished works by an unknown author, or by a known author if they have become public property; (5) the heirs or assigns of any of the above.

Are entitled to the protection of the Act: The maker or drawer of maps, plans, or scientific drawings, and composers of music, against un-

authorised reproduction of their works by any means whatsoever; the heirs and assigns of the same.

The right lasts during the life of the author, and then for eighty years. If the right be assigned by the author, it belongs to the assignee for eighty years from the death of the author, should he leave no heirs. If he do, the assignee's right is transferred by the operation of law to the heirs twenty-five years after the author's death, and continues in the heirs for fifty-five years.

No one is entitled to annotate, reproduce, add to, or improve an edition of another's works without his permission; but any one may publish and claim exclusive property in any commentary, criticism, or notes referring to such works, provided he add the correlative text.

Music.—In the case of a musical work, the total or partial reproduction of a melody with or without accompaniment, transposed or arranged for other instruments, or in another key, or in any form differing from that in which it is originally published, is forbidden.

A work need not be published in order to secure the protection of the Act. No one may, without authorisation, publish any literary, scientific, or artistic production which has been taken

LITERARY COPYRIGHT.

down in shorthand, annotated, or copied during any public or private reading, performance, or exhibition, or during a *vivâ voce* explanation of the same.

Translations.—If a translation of a Spanish work be first published in a foreign country with which Spain has entered into a completely reciprocal copyright convention, any question relating to the same which may arise, is to be settled in accordance with the terms of such convention. If the particular point raised is not touched upon by the convention, the Spanish law shall decide it.

Owners of foreign works will retain their rights in Spain, provided they adhere to the law of their own country; but they will only be able to claim protection in Spain for translations of their works into Spanish for the period during which they enjoy property in the original, according to the law of their own country. The translator of a work out of copyright can only claim protection for his own translation, not prevent others from translating the original.

Music and Drama.—No musical or dramatic composition may be performed in any theatre or public place, in entirety or in part, without the consent of the owner of the copyright. No one

may without authorisation make, let out, or sell copies of dramatic or musical compositions which, having been publicly performed, have not been printed. In the absence of any agreement to the contrary, copyright of an opera shall vest in the author of the libretto and the composer of the music jointly; of whom each may print and publish his portion of the opera separately, without the consent of the other. If the librettist refuse to allow his libretto to be performed with the music, the composer is entitled to provide another libretto for his music.

The unauthorised public performance of any dramatic or musical work is punishable according to the terms of the Penal Code (see p. 93).

The performer must hand over the entire receipts of the performance to the owner or owners of the copyright.

The publisher of an anonymous or pseudonymous work has the same rights in regard to it as an author has in regard to his works. When the author of the work declares himself legally, these rights are transferred to him.

Are considered posthumous works, besides those published after the death of the author, those which an author leaves at his death so touched up annotated, enlarged, corrected, &c.,

that they constitute new works. Any contentious question relating to the same shall be submitted to arbitration before being tried before a court.

The proprietor of a newspaper may assimilate the same to a literary work for the purposes of this law by depositing at the Ministry of the Interior at the end of each year three complete sets of the paper for the expired year. The author of an article published in a periodical may republish the same [except in another periodical ?] unless any stipulation or agreement to the contrary effect be entered into between him and the proprietor of the periodical.

A newspaper or periodical may republish without authorisation telegrams or articles appearing in another periodical or newspaper, unless they be accompanied by a note forbidding republication. In all cases the name of the paper whence the articles or telegrams are taken must be published with them.

The author of several scientific or literary works may publish a collection of all or some of them, even if he have partially assigned his copyright in the same individually.

A general copyright register is kept at the Ministry of the Interior. In all provincial libraries, or, in case there be none, in the Library

of the Institute of Secondary Education of each provincial capital, a register is kept, wherein are entered in chronological order the titles of works for which the protection of this law is sought. Maps, charts, scientific drawings, &c., are to be entered.

The proprietor of the copyright shall deposit at the place of registry three copies of the work entered; one for the library or institute of the province, one for the national library, and one for the Ministry of the Interior. The owner of the copyright, on obtaining from the librarian a receipt for the books deposited, and a certified copy of the entry in the registry, must communicate with the civil authorities in order that they may give notice of the registration to the Minister of the Interior, and forward to him two of the three books deposited. The civil authorities all over the country must send every six months to the Director-General of Public Instruction a list of all the registrations effected, so that a general registry of intellectual property may be kept up.

There are no fees on registration. A duty on the transfer of intellectual property shall be fixed by law.

It is necessary to state in the entry in the

registry what rights the person making it has in the work, according to the provisions of this law.

It is only necessary to deposit a single manuscript copy of plays or music publicly performed, but not printed, and a single manuscript transcript of the airs, &c., of any opera so performed and not printed, with an accompaniment. The registration and deposit must take place within a year of publication or public performance. The copyright vests at the time of publication, and is lost if registration is not effected within the year.

Any work not registered within a year of publication may, during ten years from the end of the year allowed for registration, be reprinted by the state, scientific bodies, or private individuals without the author's permission. If within a year from the expiration of such term of ten years, neither the author nor his heirs or assigns register the book, it becomes absolutely public property. Works not republished by the owners of them during twenty years become absolutely public property. But even after such non-republication for twenty years the work will not become public property (1) if, being a dramatic, operatic, or musical work, and being publicly performed, and duly deposited and registered, it has not been

printed ; (2) if, the work having been printed and published, the owner does not republish it for twenty years because he *bonâ fide* believes that there is no demand for more copies.

For a work to become public property by reason of non-republication, it must be the object of a declaration in the registry of copyrights, by virtue of which the state summons the owner of the copyright to republish the work within a year. If a work is published in parts it shall be deemed to be completely published when it is completed. The rules as to works becoming public property shall not apply if, within the periods allowed for registration or republication, the author or his heirs publicly manifest a wish that the work in question be not published.

An unauthorised publication, or a piracy against the terms of the present law, is to be punished first in the author of the same ; then, and in default of the author, in the publisher and printer successively. Besides incurring the penalties provided by articles 552, 560, and others of the Penal Code,¹ persons infringing a copyright shall forfeit all illegally printed copies

¹ By these sections the offender is liable to imprisonment and to a maximum fine of three times the amount of damage occasioned.

of the work to the party aggrieved. These penalties are incurred by those who (1) reproduce in Spain without authorisation works first published abroad in Spanish ; (2) forge the title-page of a copyright work, or print on the work that it is printed in Spain if it be not so printed ; (3) imitate such title-page whereby the new one is taken for the old ; (4) import from abroad works containing pirated matter, and defraud the customs authorities (the offender will further be liable for his infraction of the revenue laws) ; (5) who by any means injure foreign authors protected by this law.

Aggravating circumstances are (1) a change of the title or text of a work in order to publish it ; (2) the reproduction abroad of works afterwards introduced into Spain.

The subjects of those nations which grant to Spanish authors copyright such as is granted by this law, will enjoy the benefit of this law, without any treaty or diplomatic action, and may enforce their rights by means of a competent court.

The Spanish government is authorised to conclude copyright treaties with foreign countries on the following bases :

1. Complete reciprocity between the contracting parties.

2. Treatment of each nation by the other as the most favoured nation.

3. Any author or his representative who has legally secured copyright in the one country, to enjoy it forthwith in the other, without further formalities.

4. The prohibition in each country of the printing, selling, importation, or exportation of works in the language or dialect of the other country without the consent of the owner of the copyright therein.

France and Spain have concluded a copyright convention on these bases.

The French text of the Spanish Copyright Law may be found in the second number of the *Bulletin de L'Association Littéraire Internationale* (Paris).

LITERARY AND DRAMATIC COPYRIGHT IN SWEDEN.

THE following is a translation of the copyright law (*Lag angående eganderätt till skrift*), which received the assent of the king on August 10, 1877.¹

1. The author has the exclusive right of reproducing his works whether or not they be already published. 'Works' includes musical compositions, natural history drawings, marine and terrestrial maps, architectural drawings, and all drawings which do not come under the head of works of art.

2. The author has the exclusive right of translating his works from one dialect of the same language into another. The Swedish, Norwegian, and Danish languages are considered as different dialects of the same tongue.

3. Works published at the same time in several languages (the fact being notified at

¹ See *Sveriges Rikes Lag. Utg. af J. W. Schlyter. Stockholm, 1875.*

the head of the same) are considered as being published and written in each of those languages.

4. The translator of a work enjoys the same rights as an author, if his translation is not an infringement of any law. But any one else may translate the original work.

5. The publisher of a periodical work, or one consisting of separate articles by different authors, is considered as the author thereof, but he has not the right of republishing the articles separately. After a year the author can republish his article separately.

6. An author may assign his rights to one or more persons, with or without restrictions. If no assignment take place, his rights will be succeeded to by his lawful heirs. The assignee of the right to publish a work may not without express authority publish more than one edition, nor print more than a thousand copies of the same.

7. The copyright lasts during the author's life, and for fifty years afterwards. If two authors produce a work in common, the period of fifty years will be reckoned from the death of the author who shall last die.

8. Works published by learned and other societies which have no personal rights, and posthumous works, will be protected for fifty years

from the publication thereof. So it is in the case of anonymous and pseudonymous works; but, as regards these, if within the fifty years the author make himself known either by publishing a new edition in his own name, or by making a declaration at the Ministry of Justice, and advertising three times in a newspaper, he will enjoy the benefit of section 7.

9. When a work is published in parts or volumes, the term of copyright will run from the publication of the last part or volume. If more than three years elapse between the publication of any two parts or volumes, the term of copyright for the parts, &c., appearing before the cessation shall run from the publication of the part, &c., last published before the cessation; and the term of copyright for those parts, &c., appearing after the lapse of three years shall run from the publication of the last of such parts, &c.

10. It is forbidden as piracy, except where otherwise provided by the laws on the liberty of the press or by the present law, to republish any work as to which the term of copyright has not expired, without the consent of the author or his representative. This prohibition cannot be evaded by merely altering, abridging, or enlarging the work. It is also piracy to publish without authority

a translation of a work not yet published, a translation contrary to the terms of section 2, and the publication of a work which has not been executed in accordance with agreements either by the author or his assignee.

11. The above section shall not prevent the author of a new and original work from copying passages from another copyrighted work either *verbatim*, or in analysis, or by way as proof, explanation, or authority [of or for a statement] or as a theme for a wider development [of the subject treated in the extract].

It is not piracy to reproduce without authority passages of a copyrighted work, or an entire work if small, in a collection of extracts for religious uses or purposes of elementary education (reading, music, and history); nor to publish without authority words set to music.

In these cases the name of the author must be given with the extract or words.

12. If the source whence they are taken be indicated, it is permissible to reproduce in one periodical articles taken from another; provided they be not literary or scientific articles of considerable length at the head of which the author has stated his intention to reserve all rights.

13. No dramatic or lyro-dramatic work may

be performed [publicly] without the author or his assignee's consent. But it is permissible to publicly read the same, or perform it without scenery. In the absence of any agreement to the contrary, an assignment of the right of performance confers a right to perform as often as the assignee thinks fit, but not to under-assign any portion of his rights to a third party. The author of a work may assign the right of performance concurrently to several persons. Where the assignee of the exclusive right of performance has not exercised his rights for five years, it reverts to the assignor.

14. The rights of an author or translator of a dramatic or lyro-dramatic work last for his life, and for five years afterwards. If the work be performed anonymously it becomes public property after five years from the first performance.

15. Whoever commits piracy will be fined from 20 to 100 *kroner* (about 1*l.* 2*s.* 6*d.* to 5*l.* 12*s.* 6*d.*). The pirated edition will be confiscated for the injured party's benefit; and, if any of the copies are sold or missing, the pirate must hand over to the injured party the value of them, based on the current price of the last lawfully-printed edition. If the publication be only partially piratical, then the present section is applicable *pro tanto*.

Whoever performs or causes to be performed

against the provisions of this law any dramatic or lyro-dramatic work, is liable to the above fine. He must hand over to the injured party the total gross receipts of the performance. If the pirated piece has been performed with another piece, a proportionate part of the receipts must be handed over.

If the above rules for the calculation of the damage resulting from a piratical publication or performance cannot be applied, damages may be proved in the usual manner. They must, however, not be less than 50 *kroner*.

16. All type, plates, &c., used exclusively for printing a piratical work, and the stage-copies, score, &c., used for the piratical performance of a dramatic or lyro-dramatic work, must be seized; and, in the absence of an agreement between the parties, they must be rendered unfit for use.

17. The omission of the author's name on the title of a periodical (sections 11 and 12) is punishable by a maximum fine of 100 *kroner*.

18. The above provisions as to fines, damages, and confiscation are applicable, when it is possible, to any one who knowingly imports into or sells in the kingdom of Sweden piratical works.

19. This law is applicable to the works of Swedish subjects. Until the contrary is shown,

every anonymous or pseudonymous work published by a Swedish publisher is presumed to be by a Swede.

On condition of reciprocity the provisions of this law may be made applicable wholly or partly to the writings of foreign authors.

20. When a work is the property of several persons, the consent of each of them is necessary for the publication or performance thereof. In the case of a lyro-dramatic work the consent of the author of the text shall suffice if that be the chief part of the work ; if not, that of the composer.

21. The terms fixed by sections 5, 7, 8, 9, 13, and 14 are to be counted from January 1 next following the event on which the terms are based.

22. The author's rights, as far as they are applicable to manuscripts in the possession of the author or his widow or heirs, cannot be taken in execution, nor do they form part of a bankrupt's estate.

APPENDIX.

THE following are the countries with which Great Britain has concluded copyright conventions, and as to which Orders in Council (pp. 24, *et seq.*) have been issued : the States included under the head of Germany (p. 105 *infra*), France, Spain, Sardinia, and Belgium. The analyses which I have given below represent the combined effect of the conventions with the three first countries, and the Orders in Council putting them in force in the British Dominions.

Copyright Convention between France and Great Britain, November 3, 1851.

By this convention it is provided that any subject of the one country, who owns a copyright by the law of that country, shall be able to exercise and obtain in the other country all the rights and remedies in respect of his copyright which are exercised and obtained by a subject of the other country, in respect of a work first published in the other country, and during the same term. Lawful representatives or assigns of authors enjoy all their treaty rights. Translations are protected like original works ; but, except as hereinafter

provided, every one has a right to execute a *bonâ fide* translation from the original source. If the author of a work first published in either of the two countries reserves the right of translating it he will be entitled for five years from the publication of the original to protection from the publication in the other country of any unauthorised translation of the same. Provided that within three months of its publication in the one country the original work be registered and deposited in the other; that the publication of at least part of the translation shall take place within one year of the publication of the original, and that the whole of it be published within three years therefrom. The translation must be published in one of the two countries, and must be registered and deposited. Each part of a work published in parts will be treated as a separate work. Translations of dramatic works must, however, be published within three months of the deposit and registration of the original. Articles in periodical publications or newspapers appearing in the one country may be reproduced in the other country, if the author of the article does not state that he reserves the right of reproduction. In all cases the source whence the article is taken must be stated. Articles of political discussion may in all cases be reproduced without authority. The importation of pirated copies into either of the two countries of works protected by the present convention from piracy is forbidden.¹

None of the above rights or privileges will be

¹ For penalties, see p. 27 as to Great Britain, and p. 41 as to France.

enjoyed by the author, his representatives, or assigns, unless the work shall have been registered in the following manner. If the work be one that has first appeared in France, it must be registered at Stationers' Hall, London; if the work be one that has first appeared in the British dominions it must be registered at the *Bureau de la Librairie* of the Ministry of the Interior, Paris. Persons claiming the benefits of this convention must have complied with the laws and regulations of the respective countries. Within three months of the appearance of a work in one country, one copy of the last edition of the same must be deposited in the other, at one or other of the places of registration above mentioned, as the case may be. The fee for registration is in France one franc and twenty-five centimes (1s.), and in Great Britain one shilling; and for a certificate of registration five shillings in Great Britain, and six francs and twenty-five centimes in France.

The provisions as to registration and deposit are not applicable to articles in newspapers and periodicals. The saving as to fair adaptations of plays (p. 25) has been repealed as regards France.

During the continuance of the Convention all books are admitted into the two countries reciprocally free of duty.

Anglo-German Treaties.

Copyright conventions have been entered into between Great Britain and the following German states, which now form part of the German Empire:—Anhalt, February 8, 1853; Brunswick, March 30, 1847;

Hamburg, August 16, 1853; Hanover, August 4, 1847; Prussia, May 13, 1846, June 14, 1855; Saxony, August 24, 1846; Oldenburg, December 28, 1847; and the Thuringian Union (*viz.*, Saxe-Altenburg, Saxe-Coburg-Gotha, Saxe-Meiningen, Saxe-Weimar-Eisenach, Schwarzburg-Rudolstadt, Schwarzburg-Sondershausen, Reuss-Greiz, Reuss-Schleitz, and Reuss Lobenstein-Ebersdorf).

The combined effect of these different conventions and the Orders in Council which put them in force in this country are as follows:—

The author of any book (see p. 4) to whom the laws of either state (English or German) gives copyright shall be entitled to exercise that right in the other of such states for the same term, and to the same extent as an author of such a book would be entitled to do if it were first published in such other state; so that such authors in the one state shall have the same remedies before the courts of justice in the other state, and shall enjoy in that other state the same protection against piracy and unauthorised republication as the law affords to authors in that state.

Translators are protected against a piracy of their translation, but acquire no exclusive right to translate a book except in the following case:—The author of a book published in one state who notifies on the title-page thereof his intention of reserving the right of translation, will, during five years from the first publication of the book, be entitled to protection in the other state from the publication therein of any translation of his book not authorised by him. In order

to secure this protection, however, the author must further register and deposit his book in the one state within three months of its first publication in the other; part of the authorised translation must appear within a year, and the whole of it within three years, of the deposit and registration of the original; and the translation must be published in one of the two states, and must be registered and deposited as hereafter provided. When a book appears in parts, each part shall be treated as a separate book; but the reservation of the right of translation need only be notified on the title-page of the first part. In the case of dramatic work, the translation must be completed and published within three months of the deposit and registration of the original. The protection afforded against unauthorised translations is not intended to prohibit fair imitations, or adaptations of dramatic works to the English or German stages respectively, but is only meant to prevent piratical translations.

The importation in either of the two states of piratical copies of works protected by the Convention is forbidden.

The benefits of the Convention cannot be enjoyed unless the work has been registered and deposited as follows:—If it has first appeared in the British dominions it must be registered and deposited in Germany; if it has first appeared in Germany it must be registered and deposited in London. This must be done within three months of the first publication of the work. A certified copy of the entry in the registry of either state shall *prima facie* confer an exclusive

right of republication within such state. Such certified copy is deliverable on payment of the sum of five shillings in England and five marks in Germany. The charge for registration is one shilling in England and one mark in Germany.

There is now no duty on the importation of books, printed or reprinted, abroad.

The registration deposit to be made in Germany must, according to the existing treaties, be made in the following places :—For Prussia, the Thuringian Union, and Anhalt, at the Ministry of Ecclesiastical, Educational, and Medical Affairs, at Berlin; for Oldenburg (including Lübeck and Birkenfeld), at the Grand-Ducal Department of State and Cabinet at Oldenburg; for Saxony, at the *Direction Royale du Cercle (Die Bücherrolle)*, at Leipzig; for Hanover, at the Ministry of the Interior, at Hanover; for Hamburg, at the Office of the Public Library in the town of Hamburg.

It is doubtful what effect the union of Germany has had upon the treaties with the different German states. It is to be notified also that neither Würtemberg nor Bavaria have entered into any convention with Great Britain.

Proposed Copyright Convention between Great Britain and the United States.

At the beginning of the present year a draft convention was submitted to Her Majesty's Government by the Government of the United States as a basis for further negotiations. The draft was discussed by the

English committee of the International Literary Association and the Copyright Association, and finally the suggestions with regard to the modification of the draft made by those bodies were favourably entertained by Her Majesty's Government. The Hon. L. S. Sackville West, the newly appointed British Minister to the United States, has received instructions to press forward the negotiations for the conclusion of the convention; before leaving England he conferred upon the subject with representatives of the English committee of the International Literary Association.

The main provisions of the draft convention, as amended, are as follows :—

The author of a 'book' to whom the laws of the one country shall give copyright in the same shall enjoy in the other country all the rights, &c., which an author first publishing his book in that other country enjoys. Provided that the author of a book manufactured and published in the one country shall not be entitled to copyright in the other country unless the book be manufactured and published therein by a citizen or subject thereof within three months of its original publication. [H.M. Government proposes to substitute twelve for three months.] These provisions shall be as far as possible applicable to the representation and performance of dramatic and musical works. The importation into either country of unauthorised copies of works protected from piracy by this convention is forbidden, whether such copies were originated in either of the two countries, or in any other country. No one shall be entitled to the benefit of the conven-

tion unless he shall have registered the title of his book in both countries before its original publication, and deposited a copy of it in the other country within three months of its publication in the country of its author.

Her Majesty's Government have accepted the suggestion of the International Literary Association, and will propose that the term of three months within which books published in one country must be republished in the other be extended to twelve months. They are also inclined to consider the expediency of proposing (also at the suggestion of the International Literary Association) that registration in one country be sufficient to secure forthwith registration in the other. This system has been adopted in the Franco-Spanish convention (see p. 95).

Copyright Convention between Spain and Great Britain.

The copyright convention which had subsisted between these two countries since 1857 having been denounced so as to expire in 1880, a temporary convention was concluded in the same year on August 11, and is now in force. It is hoped that soon a less cumbersome copyright convention (such as the Franco-Spanish convention) may be entered into by Spain and this country, on the bases indicated by the Spanish copyright law (see p. 95).

The temporary treaty is exactly similar to the treaties subsisting between Great Britain and the

German states; except, of course, so much of it as relates to registration, which must be performed in Madrid at the Ministerio de Fomento, or Home Office.

The New Copyright Bill.

Mr. Hastings has introduced into the House of Commons a Bill to Consolidate and Amend the Law of Copyright. But the time occupied by the passing of the Land Bill through the Lower House has destroyed any chance which the Copyright Bill might have had of becoming law this year. The bill embodies the suggestions of the Law Amendment Society, which agree mainly with those of the Copyright Commission (1878). The chief changes of law proposed are the following :—

That in the case of dramatic, musical, and literary works, registration shall be compulsory, and that no one shall be entitled to take any proceedings for an infringement of copyright taking place before registration; that a Government registration office shall be established; that the right of delivering and printing lectures, and performing and printing dramatic compositions shall be secured by one and the same registration; that the term of copyright and the right of performance should be fifty years from the date of registration; that in the case of periodicals, &c., the term of three years be substituted for the present of twenty-eight years,¹ during which the author of an article therein cannot republish the same without the

¹ See p. 12.

consent of the proprietor of the periodical, &c. ; that in the case of British subjects copyright extends to all the British dominions ; that aliens wherever resident shall be entitled to British copyright on registering their work in that part of the British dominions where it was first published, if registration be required by the laws of that dominion ; that a British author first publishing his work, or whose dramatic or musical works are first performed out of the British dominions, shall be able to obtain copyright in the dominions by subsequent publication or performance therein, together with registration within three years from such first publication or performance in a foreign country ; that the necessity of registration and deposit in England of foreign works under the International Copyright Acts,¹ as well as that of partial or complete publication and registration of translations, be abolished ; that the authors of any foreign country between which and this country there exists a copyright convention shall have for three years an exclusive right of translating or adapting their works, and that if this right be exercised within the three years, the author shall have literary and dramatic copyright in the translation or adaptation for ten years from the registration of the same ; that if the foreign author do not exercise the above right anyone who (first?) translates or adapts the work shall enjoy the ten years' copyright.

¹ See p. 24, *et seq.*

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